

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DRUMMOND COAL SALES, INC.,

Plaintiff,

vs.

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

Case No. _____

COMPLAINT

Plaintiff, Drummond Coal Sales, Inc. (“DCS”), hereby files this Complaint against Defendant Norfolk Southern Railway Company (“Norfolk Southern”), and in support thereof states as follows:

PARTIES

1. Drummond Coal Sales, Inc. is an Alabama corporation with its principal place of business in Vestavia Hills, Alabama.

2. Norfolk Southern is a Virginia corporation with its principal place of business in Norfolk, Virginia. Norfolk Southern is a freight railroad engaged in the transportation of raw materials, intermediate products, and finished goods primarily in the Southeastern, Eastern and Midwestern United States, including Alabama. On information and belief, Norfolk Southern operates a railroad

terminal in this district, has entered into agreements to transport products to, from, and through Alabama, and otherwise conducts significant commercial activity within the state of Alabama.

JURISDICTION AND VENUE

3. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. 1332 because the amount in controversy exceeds \$75,000, exclusive of interests and costs, and it is between citizens of different states.

4. This Court has jurisdiction over this declaratory judgment action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*

5. Venue is proper in this district under 28 U.S.C. § 1391(b)(1-2) because Norfolk Southern resides in this judicial district and because a substantial portion of the events or omissions giving rise to this claim occurred in this district. Norfolk Southern regularly conducts business in and is thus subject to jurisdiction in this district, the contract at issue was negotiated and executed, at least in part, in this district, and Norfolk Southern sent invoices for payment under the Contract to DCS in this district.

FACTS

6. DCS is in the business of marketing and selling coal directly or through its affiliates. The coal is primarily mined in Colombia, South America by DCS's affiliate, Drummond Ltd.

7. On January 20, 2006, DCS and Norfolk Southern entered into a written contract the purpose of which was for Norfolk Southern to haul coal imported from Colombia to specified power plants in Georgia, North Carolina, South Carolina and Virginia. The contract was amended on January 12, 2010. The contract as amended is referred to herein as the “Contract.” The Contract has a term which ends on December 31, 2019.¹

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ The Contract contains a “Confidentiality” provision, requiring the parties to use their best efforts to maintain the confidentiality of the Contract. Therefore, DCS is publicly filing a redacted version of this Complaint, and contemporaneously filing a motion for leave to file an unredacted version under seal with the Court.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.

[REDACTED]

[REDACTED]

[REDACTED]

13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16.

[REDACTED]

17.

[REDACTED]

18.

[REDACTED]

19.

[REDACTED]

20.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

23.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

COUNT ONE

Declaratory Relief – Declaration that the Contract is Void

31. [REDACTED]

[REDACTED]

32. [REDACTED]

[REDACTED]

33. [REDACTED]

[REDACTED]

34.

[REDACTED]

[REDACTED]

[REDACTED]

35.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37.

[REDACTED]

[REDACTED]

[REDACTED]

38.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COUNT TWO
Money Had and Received and/or Unjust Enrichment

39.

[REDACTED]

[REDACTED]

40.

[REDACTED]

41.

[REDACTED]

[REDACTED]

42.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COUNT THREE

Declaratory Relief – Excused Performance Due to Norfolk Southern’s Breach

44.

[REDACTED]

[REDACTED]

45.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47.

[REDACTED]

[REDACTED]

48.

[REDACTED]

[REDACTED]

49.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1. *Journal of Management Studies*, 1997, 34, 1, 1-14.

COUNT FOUR

Declaratory Relief – Force Majeure

53.

[REDACTED]

54.

[REDACTED]

55.

[REDACTED]

56.

[REDACTED]

COUNT FIVE
Declaratory Relief – Frustration of Purpose

57.

[REDACTED]

58.

[REDACTED]

59.

[REDACTED]

60.

[REDACTED]

61.

[REDACTED]

62.

[REDACTED]

[REDACTED]

[REDACTED]

63.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COUNT SIX

Declaratory Relief – Impossibility/Impracticability of Performance

64.

[REDACTED]

[REDACTED]

65.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

66.

[REDACTED]

[REDACTED]

[REDACTED]

67.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COUNT SEVEN
Rescission, Modification or Reformation

68.

[REDACTED]

[REDACTED]

69.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

JURY DEMAND

DRUMMOND COAL SALES, INC. DEMANDS TRIAL BY JURY ON ALL
OF THE ISSUES TRIABLE BY A JURY IN THE COMPLAINT

Respectfully Submitted,

s/ William A. Davis, III

William A. Davis, III (ASB-5657-D65W)

H. Thomas Wells, III (ASB-4318-H62W)

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